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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON APPEAL FROM THE SUPREME
COURT OF INDIANA

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether an accused, imprisoned in a penal institution of another state and who has a detainer lodged against him for a criminal charge pending in the State of Indiana, is entitled to dismissal of the charge when the authorities of the retaining institution fail to inform him, in writing, of the existence, source, and contents of the detainer pursuant to the Interstate Agreement on Detainers, Article 9(7), IC § 35-2.1-2-4 (Burns Repl. 1979)?

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, the State of Indiana, respectfully requests that the Court deny the issuance of a Writ of Certiorari directed to the Supreme Court of Indiana and, thereby, refuse to review the decision of that court and the Court of Appeals of Indiana in Cause Number PS518.

## OPINION BELOW

The Court of Appeals of Indiana entered an opinion in this cause on October 26, 1983. The opinion is set forth in the Petitioner's Appendix at A-1 and is officially reported at 455 N.E.2d 609. A petition for rehearing was filed and was denied by the Court of Appeals of Indiana on February 1, 1984.

A petition for transfer was filed and was denied by the Supreme Court of Indiana on May 11, 1984. Petitioner's Appendix at A-22.

## STATEMENT OF THE CASE

On March 20, 1979, the Petitioner was charged by information, (Cause 424), with three counts of dealing in a schedule IV controlled substance, a class C felony. Later, on February 6, 1980, the Petitioner was charged by information, (Cause 470), with two counts of dealing in marijuana.

In March, 1981, the Petitioner was serving a sentence in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 62nd Judicial District, Howard County, Indiana, mailed to the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, and requested that the information be filed as a detainer against the Petitioner. On June 23, 1981, the prosecuting attorney mailed an Agreement on Detainers, Form V, which notified the State Prison of Southern Michigan that the Petitioner was also charged with three counts of dealing in marijuana under Cause 424.

By means of the Michigan Department of Corrections Agreement on Detainers Form I, the Michigan warden notified the Petitioner that an information (Cause 470) alleging two counts of dealing in marijuana had been filed against him by the Indiana prosecutor. After the Petitioner was informed of the

provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana (Cause 470). The Petitioner's appeal concerns Cause 424.

## SUMMARY OF THE ARGUMENT

The purpose of the Interstate Agreement on Detainers is to avoid difficulties often encountered in interstate proceedings by providing an expeditious, simplified method of disposing outstanding criminal charges pending in one state against a person imprisoned in another. In this case, although a provision of the Agreement, IC § 35-2.1-2-4, Article 9(7), was violated, it is well settled that a nonjurisdictional error in the proceedings by which a person is brought to trial does not deprive a court of jurisdiction. Further, the policies of the Agreement were served, in the case at bar, by the expeditious and orderly disposition of the Petitioner's charge. Thus, since the Petition for Writ of Certiorari fails to raise a substantial federal question, the petition does not warrant further review.

## ARGUMENT

The Interstate Agreement on Detainers, IC § 35-2.1-2-4 (Burns Repl. 1979) (hereinafter, Agreement), is a uniform law enacted by the majority of the states and the federal government. The Agreement is an interstate compact sanctioned by

Congress under Art. I, §10, cl. 3 of the United States Constitution. The construction of such a compact presents a question of federal law and involves federal rights. Petty v. Tennessee-Missouri Bridge Commission, (1959) 359 U.S. 275, 79 S.Ct. 785. The purpose of the Agreement is to encourage the expeditious and orderly disposition of outstanding charges and detainers based on untried indictments and informations against prisoners. IC § 35-2.1-2-4, Article 1. The Agreement provides a method by which an imprisoned individual may seek final disposition of the charges contained in a detainer filed against him by another jurisdiction. The Agreement also sets forth a means by which other jurisdictions may gain temporary custody of a prisoner to try him on outstanding charges for which a detainer has been filed.

The Agreement contains no definition of a detainer. It has been otherwise defined, however, as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." United States v. Mauro, (1978) 436 U.S. 340, 98 S.Ct. 1834. Pursuant to the Agreement, after a detainer is filed, the jurisdiction which filed it may present a written request for temporary custody of the prisoner to appropriate authorities of the state in which the individual is incarcerated. The Agreement further provides:

> [T]he appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor withing thirty [30] days, and to contest the legality of his delivery.

IC 35-2.1-2-4, Article 9(7). In addition, upon request of the state in which the individual is incarcerated, the state requesting temporary custody is required to present a certified copy of the indictment, information, or complaint which forms the basis of the detainer. IC § 35-2.1-2-4, Article 5(2).

It is clear that the Agreement protects the State's interest in having a simplified procedure for gaining temporary custody of defendants imprisoned in other jurisdictions. However, the Agreement also protects the interests of imprisoned defendants in "removing the difficulties in securing speedy trials" and removing "the uncertainties which obstruct programs of prisoner treatment and rehabilitation" when a prisoner's status is clouded by the existence of untried charges on which detainers have been lodged. IC § 35-2.1-2-4, Article 1. The Agreement is intended to be liberally construed so as to effectuate its purposes. IC § 35-2.1-2-4, Article 9. It is necessary, therefore, to review the instant issue in light of the above-stated provisions and policies of the Agreement.

In this case, on March 20, 1979, the Petitioner was charged by information, (Cause 424), with three counts of dealing in a schedule IV controlled substance, a class C felony. Later, on February 6, 1980, the Petitioner was charged by information, (Cause 470), with two counts of dealing in marijuana.

In March, 1981, the Petitioner was serving a sentence in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 42nd Judicial District, Howard County, Indiana, mailed to the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, and requested that the information be filed as a detainer against the Petitioner. On June 23, 1981, the prosecuting attorney mailed an Agreement on Detainers, Form V, which notified the State Prison of Southern Michigan that the Petitioner was also charged with three counts of dealing in marijuana under Cause 424.

By means of the Michigan Department of Corrections Agreement on Detainers Form I, the Michigan warden notified the Petitioner that an information (Cause 470) alleging two counts of dealing in marijuana had been filed against him by the Indiana prosecutor. After the Petitioner was informed of the provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana (Cause 470).

Based on the foregoing evidence, the Petitioner's presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured in violation of the terms of the Agreement. Consequently, the Petitioner argues that the information in Cause 424 should be dismissed and his conviction reversed because of the State's violation of IC § 35-2.1-2-4, Article 5(d) which provides:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [or] complaints which form the basis of the detainer or detainers or for the prosecution on any other charge or charges arising out of the same transaction.

The Petitioner's argument that the information in Cause 424 must be dismissed not only is without merit, but also misconceives the nature of the provisions of the Agreement. A violation of the Agreement is not recognizable as a claim of lack of subject matter jurisdiction--the power or authority confered upon a court to decide a given type of case. Hagans v. Levine, (1974) 415 U.S. 528, 94 S.Ct. 1372; United States v. Edwards, (2nd Cir. 1977) 564 F.2d 652. It is well settled that irregularity in the proceedings by which a person is brought to trial does not deprive the court of jurisdiction. In Frisbie v. Collins, (1952) 342 U.S. 519, 72 S.Ct. 509, the United States Supreme Court ruled:

> This Court has never departed from the rule announced in Kerr v. Illinois, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases.

Thus, a court which has jurisdiction of the subject matter of a criminal prosecution need not inquire how a defendant was brought before it; his presence in court is sufficient to confer jurisdiction over his person. In the instant case, the Howard County Superior Court derived its power to adjudicate the case against the Petitioner from IC § 33-5-20.1-4 (Burns Supp. 1984) which provides in pertinent part:

> The superior court, within and for the county, shall have original and concurrent jurisdiction with the circuit court in all civil actions and proceedings at law and in equity; probate and guardianship proceedings; actions for divorce, separation, or annulment of marriage; and in all criminal cases and proceedings; Provided, however, That the superior court shall not have the jurisdiction of a juvenile court or judge thereof, as defined by IC 33-12 [33-12-3-1--33-12-3-4].

The court unquestionably had jurisdiction over the offense of dealing in a schedule IV controlled substance for which the Petitioner was convicted.

Moreover, a violation of a statutory provision such as IC § 35-2.1-2-4, Article 9(7) is not sufficiently important to deny a court jurisdiction. It cannot be said that the statutory procedural rules defined in the Agreement, which clearly

do not rise to the level of constitutionally guaranteed rights, are so fundamental as to divest a court of jurisdiction due to a violation of a provision. The protections of the Agreement are neither founded on constitutional rights nor the preservation of a fair trial, but are designed to facilitate a defendant's rehabilitation in prison and to avoid disruptions caused when charges are outstanding against the prisoner in another jurisdiction. Brown v. District Court, (1977) 194 Col. 1225, 571 P.2d 1091. With the purposes of the Agreement in mind, a violation of a statutory provision of the Agreement should not preclude a court from obtaining personal jurisdiction over criminal defendants contrary to the general rule enunciated in Frisbie, supra. To interpret otherwise would frustrate rather than promote the stated policies of the Agreement.

Finally, the Petitioner was given a fair trial and a full opportunity to contest the charge against him. The error asserted here neither affects the truth-seeking process nor does it impinge on any fundamental or constitutionally guaranteed right. If a mechanical application of IC § 35-2.1-2-4, Article 9(7) is considered appropriate, the Agreement could be used, not for the purpose of protecting any legitimate interest a prisoner may have in his rehabilitation, but rather, to secure relief from an otherwise lawful conviction. To so strictly construe the Agreement would make a mockery of the

jury's verdict and serve to undermine the interests of justice. The Agreement was designed to correct untenable abuses by government officials in the use of detainers. This is not to say, however, that the Agreement should be interpreted so as to create a sanctuary on appeal for convicted defendants. The Agreement must be construed soundly.

Accordingly, based on the above analysis, the violation of IC § 35-2.1-2-4, Article 9(7) is a non-jurisdictional error. The policies of the Agreement were served, in this case, by the expeditious and orderly disposition of the Petitioner's charge. The Petitioner is entitled to neither the dismissal of the information on Cause 424 nor the reversal of his conviction.

## CONCLUSION

For the foregoing reasons, the Respondent, State of Indiana, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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